

107TH CONGRESS  
2D SESSION

# H. R. 3922

To amend the Internal Revenue Code of 1986 to prevent corporations from avoiding the United States income tax by reincorporating in a foreign country.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 2002

Mr. MALONEY of Connecticut introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to prevent corporations from avoiding the United States income tax by reincorporating in a foreign country.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Save America’s Jobs  
5       Act of 2002”.

6       **SEC. 2. PREVENTION OF CORPORATE EXPATRIATION TO**  
7               **AVOID UNITED STATES INCOME TAX.**

8       (a) IN GENERAL.—Paragraph (4) of section 7701(a)  
9       of the Internal Revenue Code of 1986 (defining domestic)  
10      is amended to read as follows:

1 “(4) DOMESTIC.—

2 “(A) IN GENERAL.—Except as provided in  
3 subparagraph (B), the term ‘domestic’ when ap-  
4 plied to a corporation or partnership means cre-  
5 ated or organized in the United States or under  
6 the law of the United States or of any State  
7 unless, in the case of a partnership, the Sec-  
8 retary provides otherwise by regulations.

9 “(B) CERTAIN CORPORATIONS TREATED  
10 AS DOMESTIC.—

11 “(i) IN GENERAL.—The acquiring cor-  
12 poration in a corporate expatriation trans-  
13 action shall be treated as a domestic cor-  
14 poration.

15 “(ii) CORPORATE EXPATRIATION  
16 TRANSACTION.—For purposes of this sub-  
17 paragraph, the term ‘corporate expatria-  
18 tion transaction’ means any transaction  
19 if—

20 “(I) a nominally foreign corpora-  
21 tion (referred to in this subparagraph  
22 as the ‘acquiring corporation’) ac-  
23 quires, as a result of such transaction,  
24 directly or indirectly substantially all

1 of the properties held directly or indi-  
2 rectly by a domestic corporation, and

3 “(II) immediately after the trans-  
4 action, more than 80 percent of the  
5 stock (by vote or value) of the acquir-  
6 ing corporation is held by former  
7 shareholders of the domestic corpora-  
8 tion by reason of holding stock in the  
9 domestic corporation.

10 “(iii) LOWER STOCK OWNERSHIP RE-  
11 QUIREMENT IN CERTAIN CASES.—Sub-  
12 clause (II) of clause (ii) shall be applied by  
13 substituting ‘50 percent’ for ‘80 percent’  
14 with respect to any nominally foreign cor-  
15 poration if—

16 “(I) such corporation does not  
17 have substantial business activities  
18 (when compared to the total business  
19 activities of the expanded affiliated  
20 group) in the foreign country in which  
21 or under the law of which the corpora-  
22 tion is created or organized, and

23 “(II) the stock of the corporation  
24 is publicly traded and the principal

1 market for the public trading of such  
2 stock is in the United States.

3 “(iv) PARTNERSHIP TRANSACTIONS.—

4 The term ‘corporate expatriation trans-  
5 action’ includes any transaction if—

6 “(I) a nominally foreign corpora-  
7 tion (referred to in this subparagraph  
8 as the ‘acquiring corporation’) ac-  
9 quires, as a result of such transaction,  
10 directly or indirectly properties consti-  
11 tuting a trade or business of a domes-  
12 tic partnership,

13 “(II) immediately after the trans-  
14 action, more than 80 percent of the  
15 stock (by vote or value) of the acquir-  
16 ing corporation is held by former  
17 partners of the domestic partnership  
18 (determined without regard to stock  
19 of the acquiring corporation which is  
20 sold in a public offering related to the  
21 transaction), and

22 “(III) the acquiring corporation  
23 meets the requirements of subclauses  
24 (I) and (II) of clause (iii).

1 “(v) SPECIAL RULES.—For purposes  
2 of this subparagraph—

3 “(I) a series of related trans-  
4 actions shall be treated as 1 trans-  
5 action, and

6 “(II) stock held by members of  
7 the expanded affiliated group which  
8 includes the acquiring corporation  
9 shall not be taken into account in de-  
10 termining ownership.

11 “(vi) OTHER DEFINITIONS.—For pur-  
12 poses of this subparagraph—

13 “(I) NOMINALLY FOREIGN COR-  
14 PORATION.—The term ‘nominally for-  
15 eign corporation’ means any corpora-  
16 tion which would (but for this sub-  
17 paragraph) be treated as a foreign  
18 corporation.

19 “(II) EXPANDED AFFILIATED  
20 GROUP.—The term ‘expanded affili-  
21 ated group’ means an affiliated group  
22 (as defined in section 1504(a) without  
23 regard to section 1504(b)).”

24 (b) MODIFICATION OF RATES OF CORPORATE TAX.—

1           (1) IN GENERAL.—The Secretary of the Treas-  
2       ury shall prescribe rates of tax under section 11 of  
3       the Internal Revenue Code of 1986 (relating to tax  
4       imposed on corporations) which result in a net de-  
5       crease in revenues for a taxable year equal to the net  
6       increase in revenue (if any) for that year as a result  
7       of the amendment made by subsection (a).

8           (2) ESTIMATES AND SUBSEQUENT ADJUST-  
9       MENTS.—The rates of tax prescribed under para-  
10      graph (1) shall be determined on the basis of esti-  
11      mates made by the Secretary of the Treasury. Ad-  
12      justments shall be made in such rates for succeeding  
13      taxable years to the extent prior estimates resulted  
14      in revenues which were in excess of or less than the  
15      revenues required under paragraph (1).

16      (c) EFFECTIVE DATES.—

17           (1) IN GENERAL.—The amendment made by  
18      this section shall apply to corporate expatriation  
19      transactions completed after September 11, 2001.

20           (2) SPECIAL RULE.—The amendment made by  
21      this section shall also apply to corporate expatriation  
22      transactions completed on or before September 11,  
23      2001, but only with respect to taxable years of the

- 1 acquiring corporation beginning after December 31,
- 2 2003.

